

2011 SESSION

LEGISLATION NOT PREPARED BY DLS
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HOUSE BILL NO. 1844

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 15.2-2204, 15.2-2301, and 15.2-2311 of the Code of Virginia, relating to providing notice to landowners when their real property is the subject of a zoning determination.

Patron—Athey

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2204, 15.2-2301, and 15.2-2311 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2204. Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments.

A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement appears in such newspaper. The local planning commission and governing body may hold a joint public hearing after public notice as set forth hereinabove. If a joint hearing is held, then public notice as set forth above need be given only by the governing body. The term "two successive weeks" as used in this paragraph shall mean that such notice shall be published at least twice in such newspaper with not less than six days elapsing between the first and second publication. After enactment of any plan, ordinance or amendment, further publication thereof shall not be required.

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of 25 or fewer parcels of land, then, in addition to the advertising as above required, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

When a proposed amendment of the zoning ordinance involves a change in the ~~zoning~~ rezoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to the advertising as above required, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved, provided, however, that written notice of such changes to zoning ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a subdivision plat approved and recorded pursuant to the provisions of Article 6 (§ 15.2-2240 et seq.) of this chapter where such lots are less than 11,500 square feet. One notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that a representative of the local commission shall make affidavit that such mailings have been made and file such affidavit with the papers in the case. Nothing in this subsection shall be construed as to invalidate any subsequently adopted amendment or ordinance because of the inadvertent failure by the

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59 representative of the local commission to give written notice to the owner, owners or their agent of any
60 parcel involved.

61 The governing body may provide that, in the case of a condominium or a cooperative, the written
62 notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in
63 lieu of each individual unit owner.

64 Whenever the notices required hereby are sent by an agency, department or division of the local
65 governing body, or their representative, such notices may be sent by first class mail; however, a
66 representative of such agency, department or division shall make affidavit that such mailings have been
67 made and file such affidavit with the papers in the case.

68 A party's actual notice of, or active participation in, the proceedings for which the written notice
69 provided by this section is required shall waive the right of that party to challenge the validity of the
70 proceeding due to failure of the party to receive the written notice required by this section.

71 C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map
72 classification; or an application for special exception for a change in use or to increase by greater than
73 50 percent of the bulk or height of an existing or proposed building, but not including renewals of
74 previously approved special exceptions, involves any parcel of land located within one-half mile of a
75 boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written
76 notification as above required, written notice shall also be given by the local commission, or its
77 representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of
78 such adjoining locality.

79 D. When (i) a proposed comprehensive plan or amendment thereto, (ii) a proposed change in zoning
80 map classification, or (iii) an application for special exception for a change in use involves any parcel of
81 land located within 3,000 feet of a boundary of a military base, military installation, military airport,
82 excluding armories operated by the Virginia National Guard, or licensed public-use airport then, in
83 addition to the advertising and written notification as above required, written notice shall also be given
84 by the local commission, or its representative, at least 10 days before the hearing to the commander of
85 the military base, military installation, military airport, or owner of such public-use airport, and the
86 notice shall advise the military commander or owner of such public-use airport of the opportunity to
87 submit comments or recommendations.

88 E. The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the authority of
89 prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be
90 required by such act or by this chapter, provided a public hearing was conducted by the governing body
91 prior to such adoption or amendment. Every action contesting a decision of a locality based on a failure
92 to advertise or give notice as may be required by this chapter shall be filed within 30 days of such
93 decision with the circuit court having jurisdiction of the land affected by the decision. However, any
94 litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.

95 F. Notwithstanding any contrary provision of law, general or special, the City of Richmond may
96 cause such notice to be published in any newspaper of general circulation in the city.

97 G. When a proposed comprehensive plan or amendment of an existing plan designates or alters
98 previously designated corridors or routes for electric transmission lines of 150 kilovolts or more, written
99 notice shall also be given by the local planning commission, or its representative, at least 10 days before
100 the hearing to each electric utility with a certificated service territory that includes all or any part of
101 such designated electric transmission corridors or routes.

102 *H. When a party other than the owner of a property requests that the zoning administrator or any*
103 *other administrative officer provide a written order, requirement, decision, or determination or*
104 *undertake any other action within the scope of his authority that would bind the owner of the property,*
105 *written notice shall be given to the owner of the property within 10 days of the receipt of such request*
106 *by the administrator or officer.*

107 § 15.2-2301. Same; petition for review of decision.

108 Any zoning applicant or any other person who is aggrieved by a decision of the zoning administrator
109 made pursuant to the provisions of § 15.2-2299 may petition the governing body for review of the
110 decision of the zoning administrator. All petitions for review shall be filed with the zoning administrator
111 and with the clerk of the governing body within thirty days from the date of the decision for which
112 review is sought and shall specify the grounds upon which the petitioner is aggrieved. *A decision by the*
113 *governing body on an appeal taken pursuant to this section shall be binding upon the owner of the*
114 *property which is the subject of such appeal only if the owner of such property has been provided*
115 *written notice of the zoning violation, written determination, or other appealable decision.*

116 § 15.2-2311. Appeals to board.

117 A. An appeal to the board may be taken by any person aggrieved or by any officer, department,
118 board or bureau of the locality affected by any decision of the zoning administrator or from any order,
119 requirement, decision or determination made by any other administrative officer in the administration or
120 enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning

requirements pursuant to § 15.2-2286. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, *shall be sent to the owner of the property affected by such violation notice or written order and shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given. A written notice of a zoning violation or a written order of the zoning administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. A decision by the board on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with this section.* For jurisdictions that impose civil penalties for violations of the zoning ordinance, any such civil penalty shall not accrue or be assessed during the pendency of the 30-day appeal period.

B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical or other nondiscretionary errors.